UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 14 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Adrenaline Truck Performance, LLC
Robert Coddens, Owner
3073 E. Red Tail
Eagle, ID 83616

Registered Agent for Adrenaline Truck Performance, LLC
Robert Coddens
1854 E. Lanark St
Meridian, ID 83642

Adrenaline Truck Performance, LLC
Andrea Coddens, Owner
3073 E. Red Tail
Eagle, ID 83616

Emily Schilling
Holland & Hart LLP
800 W. Main Street, Suite 1750
Boise, ID 83702

Re: Notice of Violation of the Clean Air Act

Mr. Robert & Mrs. Andrea Coddens:

The United States Environmental Protection Agency has investigated and continues to investigate Adrenaline Truck Performance, LLC ("ATP") for compliance with the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As summarized in this Notice of Violation, the EPA has determined that ATP sold parts or components for motor vehicles and engines that bypass, defeat, or render inoperative elements of design of those vehicles or engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. The EPA has also determined that ATP knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, ATP violated Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This Notice of Violation arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the Act, Congress found, in part, that "the increasing

use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare."[1] Congress' purpose in creating the CAA, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."[2]

The EPA's allegations here concern parts or components for motor vehicles and engines subject to emission standards.[3] The Act requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare.[4] As required by the Act, the emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology."[5] Motor vehicles and engines are subject to specific emission standards for each pollutant, based on a vehicle's or engine's class and model year.[6]

Vehicle and engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine."[7] For example, vehicle manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen ("NOx"). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include diesel particulate filters ("DPFs"), exhaust gas recirculation ("EGR"), and selective catalytic reduction ("SCR"). Modern vehicles are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

The Act makes it a violation "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or

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[1] CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
[2] CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).
[3] *See generally* 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).
[4] CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).
[5] CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
[6] *See, e.g.*, heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11 and light-duty vehicle emission standards at 40 C.F.R. § 86.1811-04. *See also* 40 C.F.R. §§ 86.090-8 (1990 and later model year light-duty vehicles); 86.094-9 (1994 and later model year light-duty trucks); 86.001-9 (2001 and later model year light-duty trucks); 86.004-9 (2004 and later model year light-duty trucks); 86.091-10 (1991 and later model year Otto-cycle heavy-duty engines and vehicles); 86.008-10 (2008 and later model year Otto-cycle heavy-duty engines and vehicles).
[7] 40 C.F.R. § 86.094-2.

should know that such part or component is being offered for sale or installed for such use or put to such use."[8] It is also a violation to cause any of the foregoing acts.[9]

To ensure that every new motor vehicle or engine legally sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, "introduced into commerce") satisfies the applicable emission standards, the EPA runs a certification program. Under this program, the EPA issues certificates of conformity ("COCs"), thereby qualifying motor vehicles and engines for introduction into commerce.[10] To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year in which it intends to manufacture or import motor vehicles or engines for introduction into commerce. The COC application must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices ("AECDs") and the engine parameters they sense, as well as test results from a test vehicle or engine showing that it-satisfies the applicable emission standards.[11] An AECD is "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system."[12]

Alleged Violations

Information ATP provided to the EPA shows that from January 1, 2013, to December 31, 2015, ATP manufactured, offered for sale, and sold software and hardware designed for use on motor vehicles or engines, primarily heavy-duty diesel trucks and engines, manufactured by companies including Cummins Inc. ("Cummins"); FCA US LLC and its predecessors ("FCA"); General Motors Co. ("GM"); and Ford Motor Co. ("Ford"). ATP sold hardware, including devices known as "tuners," which are designed to erase and/or reprogram ECMs, and software, including ECM programs known as "tunes," that allow the end user to disable the elements of design that manufacturers employ to meet emission standards. ATP also created software "tunes" that would disable elements of design that manufacturers employ to meet emission standards and either sent the tunes directly to end users or installed them on hardware manufactured by other entities (e.g., EFI Live). For example, ATP's high-selling software or hardware products were called (among other things) "EFI Live Tuning-Duramax DSP5 Mild Max" for GM trucks from 2001-2015, and "EFI Live Tuning Single-Level 2 Cummins" for Dodge trucks from model years 2006-2009.

A principal effect of these products is to bypass, defeat, or render inoperative elements of the engine design that control emissions of regulated air pollutants. ATP rendered the original manufacturers' software inoperative (insofar as the software received input from hardware used as emission control devices) and replaced it with software that allowed the vehicles or engines to function without inputs from emission control devices. Based on the information submitted by

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[8] CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).
[9] CAA § 203(a), 42 U.S.C. § 7522(a).
[10] 40 C.F.R. § 86.007-30.
[11] 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.096-21; *see also* EPA, *Advisory Circular Number 24-3: Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-Duty Engines* (Jan. 19, 2001).
[12] 40 C.F.R. § 86.082-2.

ATP, the products allow or disable elements of design that manufacturers employ to meet emission standards, such as exhaust gas recirculation systems and exhaust aftertreatment devices.

The ATP software and hardware described above are identified in the table below:

PRODUCT	EFFECT ON EMISSION CONTROL DEVICES	QUANTITY
ATP Manufactured Tunes Loaded on EFI Live Tuners	Alter operating parameters and/or override on-board diagnostic (OBD) codes to facilitate removal of diesel oxidation catalyst (DOC), diesel particulate filter (DPF), exhaust gas recirculation (EGR), and/or Selective Catalytic Reduction Systems (SCR).	6,682
ATP Manufactured Tunes Only	Alter operating parameters and/or override OBD codes to facilitate removal of DOC, DPF, EGR, and/or SCR.	6,543
H&S, RaceME, and Smarty Manufactured Tunes loaded on Tuners	Alter operating parameters and/or override OBD codes to facilitate removal of DOC, DPF, EGR, and/or SCR.	216
EGR Removal Kits	Render EGR inoperative	2,019
Exhaust System Component Removal Pipes	Render DOC, DPF, and/or SCR inoperative	453
	TOTAL	**15,913**

ATP knew or should have known that these products were offered for sale or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. The products replaced the original manufacturers' ECMs insofar as they overrode the on-board diagnostic system to bypass, defeat, or render inoperative emission control devices by allowing the removal of elements of design without illuminating a Malfunction Indicator Lamp, prompting a Diagnostic Trouble Code, or causing an engine power reduction due to a missing or malfunctioning element of control. The exhaust replacement pipes and EGR

removal kits physically replaced emission control devices such as DPFs and EGR systems. For example, an advertisement for one of ATP's products, a Sinister LLY Duramax EGR Race Kit, SKU: SINSD-DGRD-LLY, states:

> This EGR Race Kit Completely replaces the EGR system–no other parts are required. For ease of install this kit does not require removal of the intake manifold, up-pipe or turbocharger.
>
> **Features:**
>
> - Does not Require removal of turbo, intake manifold, or up-pipe
> - CNC Machined Billet Aluminum and Stainless Steel
> - Completely Replaces EGR System, No other Parts Required
> - Includes detailed Installation Instructions
> - Fits on 2004.5–2005 models
>
> **Requires the use of a tuner that will allow you to disable the EGR system.**

Furthermore, ATP knew or should have known that these products were offered for sale or installed on "motor vehicles" or "motor vehicle engines." Many products were designed and marketed for use on a specific make, model, and year of Cummins, GM, or Ford motor vehicle or engine. Cummins, FCA, GM, or Ford sought and obtained COCs from the EPA for these motor vehicles or engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines."

Enforcement

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.[13] Persons violating Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under Section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to $3,750 for each violation.[14]

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Edward Kulschinsky, the EPA attorney assigned to this matter, within 14 days of receipt of this Notice of Violation. Mr. Kulschinsky can be reached at (202) 564-4133 or Kulschinsky.Edward@epa.gov.

[13] CAA §§ 204, 205, 42 U.S.C. §§ 7523, 7524.
[14] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Sincerely,

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement